IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6570 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

PRADEEPBHAI NANUBHAI

Appearance:

MR HS MUNSHAW for Petitioners No. 1-2

Ms. DT SHAH for Respondent

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/02/2002

ORAL JUDGEMENT

The present petition is filed challenging the judgement and award passed by the Labour Court, Surendranagar in Reference (LCS) No.347 of 1992 dated 15.5.2001 whereby the Labour Court was pleased to declare the action of the present petitioner of terminating the services of the respondent workman on 1.8.1992 as illegal

and was pleased to order reinstatement of the respondent workman on his original post with 30% back wages and cost of Rs.250/-.

2. The case of the petitioner, Gujarat Water Supply & Sewerage Board (hereafter referred to as "the Board") is that the petitioner Board was entrusted with additional duties of providing water during the years of scarcity and during that period for the purpose of providing drinking water services of the respondent workman were availed of purely on ad hoc basis, as a daily wager in the month of March 1987 which continued for some time. The details are set out in the statement, Annexure 'A'. It is the case of the petitioner Board that thereafter as the services of the respondent workman were not required he was not provided with any work. It is only after about four years, in the month of May 1992 his services were again required. Therefore, he was engaged as a daily wager on temporary and ad hoc basis for some time and on 31.8.1992 his services were dispensed with.

3. Mr.Munshaw, learned advocate submitted that from the details of the working of the respondent workman set out in Annexure 'A' whereby it is clear that the respondent workman had never worked for 240 days within a period of 12 calender months preceding the date of his termination. Mr.Munshaw, made available a copy of the statement which was produced before the Assistant Labour Commissioner, Surendranagar with forwarding letter dated 19.9.1992 the details tally with Annexure 'A'. Mr.Munshaw submitted that this is only with a view to show that whatever material was available with the Board, was produced before the Conciliation Officer as well as the Labour Court. Mr.Munshaw submitted that on the basis of the said information as the respondent workman had not worked for 240 days in the preceding 12 months there is no question of the respondent workman getting any relief as granted by the Labour Court. Mr.Munshaw submitted that the learned Judge has erred in accepting the bare statement of the respondent workman to the effect that he was working with the petitioner Board since 1987 and in the year 1992 without any reason his services were terminated and that he had worked for 240 days in each year for all these years. Mr.Munshaw submitted that as against that the petitioner Board had produced along with exhibit 19 (list of documents) the documents and from those documents it was clear that the respondent workman had worked only for the days mentioned in the statement, a copy of which is at Annexure 'A' to this petition. Mr.Munshaw, learned advocate submitted that not only the

documents available with the Board were produced, two persons of the rank of the Deputy Executive Engineer were examined before the Labour Court. Exhibit 17 is the deposition of one Mr.Kanhaiyalal Prabhudasbhai Chauhan who was in-- charge Deputy Executive Engineer at Surendrangar. He deposed before the Labour Court that he had employed the respondent workman as a daily wager helper and that he was conveyed that on the expiry of the completion of the work, the respondent's services will stand automatically terminated. After the respondent workman was employed as the deponent was transferred from Surendranagar, he is not able to state as to till what period the scarcity work was continued.

4. The other witness examined by the petitioner Board is one Mr.Rajendrakumar Munilal Barot, exhibit 18. He deposed that in the year 1992 he was Deputy Executive Engineer at Surendranagar. He has categorically deposed that he has employed the respondent workman in 1992 as a daily wager helper. On 31.8.1992 the respondent workman's services were terminated. He has also stated that the reasons for termination was that the scarcity work was over. He has also deposed that no new person is employed in the place of the respondent workman. He has also deposed in terms that it is not true that in the year 1992 when he took charge, the respondent workman was in employment. It is also deposed that the respondent workman was paid on voucher. In the voucher it was specifically mentioned 'daily wager helper'. Mr.Munshaw, learned advocate submitted that the said deposition corroborates with the details produced before the Conciliation Officer as well as before the Labour Court. Thus, there was no reason for the Labour Court to disbelieve the case of the petitioner Board to the effect that the respondent was engaged as a daily wager helper in 1987 and continued upto July 1988 and thereafter his services were not availed of by the Department until 1992. In may 1992 he was again engaged. On completion of the scarcity work his services were terminated on 31.8.1992. Mr.Munshaw submitted that besides the aforesaid submissions he also relies upon the latest judgement of this Court as well as of the Honourable the Apex Court holding that the Government Department is not an industry. Mr.Munshaw submitted that there is a judgement of the Full Bench of this Court in the matter between H.K. Makwana v. State of Gujarat reported in 1994 (2) GLR 1002 which directly applies to the facts of the present case wherein it is held that the relief work undertaken by the State during the drought, famine, etc. for providing employment to the needy is not an 'industry' but is the performance of duty in exercise of

sovereign functions.

5. Learned advocate Ms.D.T. Shah appearing for the respondent workman submitted that the judgement and award of the learned Judge of the Labour Court is just and proper and the same be upheld. The same does not warrant any interference at the hands of this Court. She submitted that in fact the learned Judge ought to have granted 100% back wages, but the learned Judge has granted only 30% thereof. She emphatically submitted that in the present case the respondent workman made an application, exhibit 10 and prayed for an order directing the petitioner Board to produce the muster roll, pay register of the workmen for the period 1987 to 1992 and the seniority list of the workmen. Despite this application, on which an order was passed to produce those documents, the same were not produced. Ms.Shah, learned advocate submitted that when the documents which were demanded and were ordered to be produced are not produced for the entire period (as documents were produced for part of the period), the learned Judge has rightly believed the case of the respondent workman and has rightly ordered reinstatement with 30% back wages. Ms.Shah has relied upon a judgement in the matter between Petlad Bulakhidas Mill Company Limited v. Ramabhai Bhikhabbhai, reported in 1995 (II) LLJ 1240, wherein this Court had held that,

> "The management for its own reason having chosen to keep back best evidence available with them cannot at this stage be relied upon."

Ms.Shah submitted that in fact an adverse inference is required to be drawn against the petitioner Board as the petitioner Board did not produce muster roll, pay register for the entire period, i.e. 1987 to 1992 coupled with the seniority list of the workmen.

6. The submission of Ms.Shah cannot be accepted for the simple reason that the petitioner Board did produce along with exhibit 19, and the contents were corroborated by deposition of two officers of the petitioner Board who worked as Deputy Executive Engineers at Surendranagar at the relevant time. Not only that Mr.Munshaw, learned advocate has made available a copy of the reply filed before the Conciliation Officer on 19.9.1992. There is no reason to disbelieve the contents of these two documents. It is equally important that if the respondent workman had come to the Court with a specific case that from 1987 to 1992 he was working with the petitioner Board and that too for 240 days in each year,

it was incumbent upon him to produce some material to substantiate his case. The position emerging from the record is that except for the bare statement of the respondent workman the respondent workman has not produced any material whatsoever to support his case. As against that right at the first opportunity the petitioner Board has produced the record in the form of a statement about the working days of the respondent workman. The same was produced before the Labour Court and was corroborated by two responsible officers of the Board, who were at the relevant time working as Deputy Executive Engineers at Surendranagar. In view of that there is no question of drawing any adverse inference against the petitioner Board.

7. The learned advocate Ms.Shah submitted that as the learned Judge of the Labour Court has recorded a finding to the effect that the respondent workman had worked since 1987 to 1992 and had worked for 240 days each year, the same is not required to be interfered with by this Court. In support of this contention, Ms.Shah relied upon the judgement of this Court in Letters Patent Appeal No.1495 of 1999 in Special Civil Application No.482 of 1985 (Coram : D.M. Dharmadhikari, CJ & J.M. Panchal, J.) dated 2.8.2002. Ms.Shah relied upon contents of para 3 of the judgement which read as under:

> "On going through the relevant part of the award of the Labour Court and the order of the learned Single Judge, we find that the factual aspect was duly examined. It has been found that it was for the employer to have produced the Muster Roll to falsify the case of the workman that the workman a had worked continuously for 240 days. Since the employee failed to produced the Muster Roll on the evidence available, the finding reached by the Labour Court cannot faulted."

8. The judgement has no application to the facts of the present case. In view of the aforesaid discussion which may be reiterated even at the cost of repetition in the present case the respondent workman came out with the case that he was working from 1987 to 1992 and for 240 days in each year. Unlike the other case, in the present case the petitioner Board was vigilant enough and therefore, produced necessary material before the Conciliation Officer and also before the Labour Court. That material is corroborated by deposition of two witnesses examined on behalf of the petitioner Board. In view of that it was for the respondent workman to establish that what is produced before the Conciliation

Officer and/or before the Labour Court and what is deposed by two witnesses is not correct and he has some material to prove otherwise. It is easy for the respondent workman to say that he has no material to prove his case. At the same time, difficulty is required to be appreciated that the department cannot negatively prove the case that the respondent workman had not worked with the department.

9. Ms.Shah submitted that learned advocate Mr.Munshaw is not able to produce a copy of exhibit 19 or for that reason a copy of exhibit 20 before this Court. Mr.Munshaw submitted that he is not having copies of those two documents readily available with him. However, if some time is granted, he may produce the same. No time can be granted now at this stage when matter is fully heard. In fact, Mr.Munshaw, learned advocate has produced for perusal of this Court a copy of the reply filed before the Conciliation Officer dated 19.9.1992. This Court found it reliable enough as it discloses the case of the Department pleaded right from the beginning. Hence this contention of Ms.Shah is rejected.

10. In the result, in view of the aforesaid discussion, the judgement and award of the learned Judge, Labour Court, Surendrangar in Reference (LCS) No.347 of 1992 dated 15.5.2001 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

karim